

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte DAVID MARTIN



Appeal No. 2006-1992
Application No. 09/705,671

HEARD: August 10, 2006

Before CRAWFORD, LEVY, and FETTING, Administrative Patent Judges.
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 23, which are all of the claims pending in this application.

The appellant's invention relates to the response measurement of personal direct sales and service and the use of such results to change customer prioritization or change the allocation of sales and service effort to current or potential customers (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

THE PRIOR ART

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

"How to establish quality control over the sales force" by Ed Roseman, Medical Marketing and media v27, n10, p.544(7), Oct. 1992, Dialog File 148, record #06199077 (Roseman)

"Selling" by Anonymous, Marketing Telemarketing Awards 1997 Supplement, pp. 18-19, Jun. 19, 1997, Dialog File 15, Record #01444255. (Anonymous)

"I want my MTV:" Drive marketing results with multivariable testing techniques" by Bell, Gordon H., Dialog File 15, record #01549882. (Bell)

THE REJECTIONS

Claims 1, 5 to 9, 13 to 15, 19 and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable of Roseman in view of Anonymous.

Claims 2 to 4, 10 to 12, 16 to 18 and 20 to 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Roseman and Anonymous and further in view of Bell.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (mailed December 30, 2005) for the examiner's complete reasoning in support of the rejections, and to the brief (filed August 23, 2005) and reply brief (filed March 6, 2006) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

We turn first to the examiner's rejection of claims 1, 5 to 9, 13 to 15, 19 and 23 under 35 U.S.C. § 103 as being unpatentable over Roseman in view of Anonymous. We initially note that the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

The examiner relies on Roseman for teaching the step of creating on a computer an electronic prioritized list of customers for representatives of an organization to use in contacting customers. This list includes identification of a customer identity and specified contact frequency for each customer (answer at pages 3 to 4).

We agree with the examiner in regard to this finding as Roseman discloses that physicians are ranked by a pharmaceutical company representatives to determine call frequency (page 1).

Recognizing that Roseman does not describe the step of adjusting the specified call frequency, the examiner relies on Anonymous and finds that Anonymous discloses

adjusting the specified contact frequency for a selected subset of customers to create an electronic prioritized list and communicating this adjusted prioritized list to the representatives and measuring the changes in the promotional response among the selected subset of customers (answer at page 4). The examiner concludes:

It would have been obvious to one skilled in the art at the time the invention was made to add Anonymous's method of adjusting contact frequency for a small group and test measured responses changes as against a control group to Roseman's prioritized list to determine whether changing call frequencies increase sales as a step toward determining optimum call frequencies (Roseman p. 2, 4th paragraph) and in the process to identify the better leads (Roseman, at page 2, 1st to 6th paragraphs, discloses "constantly fine-tuning the physician selection" [answer at page 4].

Anonymous discloses that 20,000 smaller companies who are not in regular contact with the sales team are targeted for contact out of 45,000 account customers which are handled by the company.

Appellant argues that Anonymous does not disclose testing promotion response by alteration of call frequency.

We do not find this argument persuasive because it is not commensurate with the actual scope of claim 1. Claim 1 does not recite testing promotion response by alteration of call frequency but rather:

measuring changes in the promotional response among said selected subset of customers and recording data relating to said changes in an electronic data storage system.

Anonymous clearly discloses measuring changes in the promotional response among the selected subset of customers when it discloses on page 2 that among the targeted customers a 27.9% increase in spending was measured.

Appellant also argues that Anonymous does not disclose adjusting the contact frequency for a selected subset of customers because 20,000 out of 45,000 customers is not a selected subset because 20,000 is almost half of the customers and can not be considered a selected subset.

We do not agree. In our view, any portion of the 45,000 customers can be considered a selected subset as broadly recited in claim 1.

Appellant also argues that Anonymous (1) does not disclose alteration of the planned selling cycle by the representatives, (2) relates to actual calls not suggested calls, and (3) does not disclose the selection of the selected subset is random.

We do not find these arguments persuasive because they are not commensurate with the scope of claim 1 which does not recite that the selling cycle is altered by the representatives, that it relates to suggested calls or that the selection of the subset of customers is random.

Appellants argue that one of ordinary skill in the art would not have added the method of calling on previously uncalled customers disclosed by Anonymous with the concepts of ranking potential customers and setting call frequencies for customers

based on relative rankings disclosed in Roseman to arrive at the claimed invention.

Appellant does not elaborate on this argument.

We agree with the examiner that it would have been obvious to add Anonymous' method of forming a select subgroup and increasing contacts among that select group to test the effectiveness of increased contacts to arrive at an optimum contact frequency. We note that Roseman discloses that sales increases peak at a certain call frequency and then decline after that frequency is reached thereby suggesting that obtaining the optimum call frequency to increase sales is useful information (see paragraph 4 on page 2).

In view of the foregoing, we will sustain the examiner's rejection of claim 1. We will likewise sustain the rejection as it is directed to claims 6 to 9, 14, 15 and 19 because the appellant has not argued the separate patentability of these claims.

In regard to claims 5 and 13, appellants argue that the cited prior art does not disclose or suggest the subject matter of these claims.

We agree with the examiner that:

monitoring of actual contacts with customers is taught by Roseman at p. 1, 9th paragraph, thus "measuring changes in actual contacts by said representatives with said selected subset of customers" in the Roseman/Anonymous system would have been obvious to one skilled in the art at the time the invention was made to be able to measure the changes taught by Anonymous and thereby effect the Roseman/Anonymous method [answer at page 6].

Therefore, we will sustain the rejection as it is directed to claims 5 and 13.

In regard to claim 23, appellant argues that the cited references do not disclose or suggest a method of improving promotion response by reducing calling on physicians whose response to promotion efforts is not reduced by lower call levels.

We agree with the examiner that:

... if the response measured is negative when applied to a (second or subset) group of doctors, it would have been obvious to one skilled in the art at the time the invention was made, to identify that group of doctors as low-responding docs and in view of Roseman's teaching that lower responding docs get lower call frequency (p. 1 8th paragraph), the lower measured response thus would have been used as an input to the "creation of an updated prioritized list with a modified (decreased) contact frequency applicable to customers contained in said one or more second target groups of customers" and "whose promotional response is least affected by a decrease in contact frequency" [answer at pages 6 to 7].

Therefore, we will sustain the rejection as it is directed to claim 23.

We turn next to the examiner's rejection of claims 2 to 4, 10 to 12, 16 to 18 and 20 to 22. The examiner finds that neither Roseman nor Anonymous describes increasing or decreasing the quantity of contacts made with a first group and increasing the contacts made with a second group. The examiner relies on Bell for disclosing testing several ideas at the same time on different subgroups and measuring the results from each test on each group. In addition, the examiner finds that Bell describes modifying call frequency and measuring the effect. The examiner concludes:

It would have been obvious to one skilled in the art at the time the invention was made to add the Bell MVT test and measure technique as applied to call frequencies to the

prioritized list based on call frequency system of Roseman/Anonymous effectively to test and measure the marketplace effect of several ideas (different call frequencies) such as taught by Bell [answer at page 7].

Appellant argues that Bell discloses nothing about sales representative bias.

We do not find this argument persuasive because the claims do not recite anything related to sales representative bias.

In view of the foregoing, we will sustain the examiner's rejection of claim 2. We will also sustain the examiner's rejection of claims 10, 16, and 20 because the appellant has not argued the separate patentability of these claims.

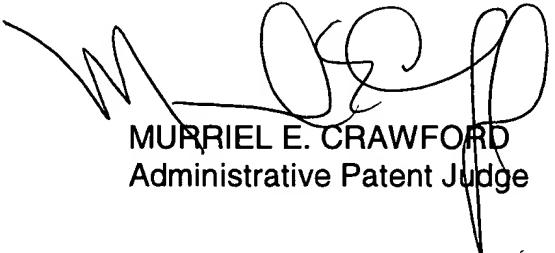
Regarding claims 3, 4, 11, 12, 17, 18, 21 & 22, appellant argues that the cited references do describe a method whereas the call frequency is reduced or reduced for some groups and increased for others.

We do not find this argument persuasive because Roseman discloses that call frequency is set based on various factors (page 1, paragraphs 4 and 5) and that an optimum call frequency can be determined (page 2, paragraph 4) thereby suggesting that some groups receive increased call frequency and some groups receive decreased call frequency.

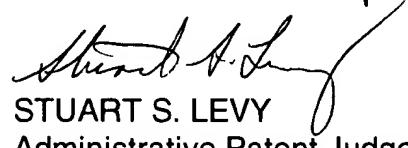
In view of the foregoing, the decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED



MURRIEL E. CRAWFORD
Administrative Patent Judge



STUART S. LEVY
Administrative Patent Judge



ANTON W. FETTING
Administrative Patent Judge

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